

## §1180.5

of any such data, or the weight that should be accorded it.

(1) Annual STB Form R-1 Reports submitted by rail carriers.

(2) Quarterly Commodity Statistics submitted by rail carriers.

(3) STB Monthly Labor Statistics.

(4) Quarterly Financial Statements of Rail Carriers.

(5) All other reports submitted to the STB under oath.

(6) Annual 1-percent Waybill Sample.

(7) Federal Reserve Board Production Statistics.

(8) AAR compilations of bad order ratios, equipment ownership and repair statistics, and freight car order figures.

[47 FR 9844, Mar. 8, 1982. Redesignated at 47 FR 49592, Nov. 1, 1982 and amended at 49 FR 15088, Apr. 17, 1984; 50 FR 15751, Apr. 22, 1985; 51 FR 4928, Feb. 10, 1986; 51 FR 25207, July 11, 1986; 52 FR 46484, Dec. 8, 1987; 56 FR 36111, July 31, 1991; 56 FR 41806, Aug. 23, 1991; 58 FR 29362, May 20, 1993; 58 FR 63104, Nov. 30, 1993; 62 FR 9717, Mar. 4, 1997; 64 FR 53269, Oct. 1, 1999]

## §1180.5 [Reserved]

## §1180.6 Supporting information.

(a) All applications filed under 49 U.S.C. 11323 shall show in the title the names of the applicants and the nature of the proposed transaction. Beneath the title indicate the name, title, business address, and telephone number of the person(s) to whom correspondence with respect to the application should be addressed. The following information shall be included in all applications:

(1) A description of the proposed transaction, including appropriate references to any supporting exhibits and statements contained in the application and discussing the following:

(i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

(ii) The proposed time schedule for consummation of the proposed transaction.

(iii) The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or

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improving the financial viability of the applicants.

(iv) The nature and amount of any new securities or other financial arrangements.

(2) A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria, including

(i) The effect of the transaction on inter- and intramodal competition, including a description of the relevant markets (see §1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

(ii) The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

(iii) The effect of the increase, if any, of total fixed charges resulting from the proposed transaction.

(iv) The effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.

(v) The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

(vi) The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11324.

(3) Any other supporting or descriptive statements applicants deem material.

(4) An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the

Board. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.<sup>2</sup>

(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

(6) Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

(7) Explanation of the transaction.

(i) Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).

(ii) Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.<sup>3</sup> In addition, parties to exempt trackage rights agreements and renewal of agreements described at §1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.

(iii) If a consolidation or merger is proposed, indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and char-

acter of capital stock and other securities to be issued.

(iv) Court order (exhibit 3). If a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.

(v) State whether the property involved in the proposed transaction includes all the property of the applicant carriers and, if not, describe what property is included in the proposed transaction.

(vi) Briefly describe the principal routes and termini of the lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.

(vii) State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.

(8) Environmental data (exhibit 4). Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transaction, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Board's Section of Environmental Analysis for the proper format of the environmental report.

(b) In a *major* transaction, submit the following information:

(1) Form 10-K (exhibit 6). Submit applicant carriers' most recent filing with the Securities and Exchange Commission (SEC) under 17 CFR 249.310. This shall not be incorporated by reference, and shall be updated with any Form 10-K subsequently filed with the SEC over the duration of the proceeding.

(2) Form S-14 (exhibit 7). Submit applicant carriers' most recent filing with the SEC under 17 CFR 239.23. This shall not be incorporated by reference, and shall be updated with any Form S-14 subsequently filed with the SEC over the duration of the proceeding.

(3) Change in control (exhibit 8). Indicate any change in ownership, control, or officers not indicated in the most recent annual report Form R-1.

<sup>2</sup> An opinion of counsel is not required in a control transaction for the party sought to be controlled, or in a responsive application for the party against whom relief is sought.

<sup>3</sup> A final signed contract or agreement need not be filed with a responsive application. However, a draft contract or agreement should be submitted containing the significant terms proposed.

(4) Annual reports (exhibit 9). Submit applicant carriers' two most recent annual reports to stockholders. This shall not be incorporated by reference, and shall be updated with any annual or quarterly report to stockholders issued over the duration of the proceeding.

(5) Issues (exhibit 10). Submit a discussion of any other issues relevant to the transaction.

(6) Corporate chart (exhibit 11). Submit a corporate chart indicating all relationships between applicant carriers and all affiliates and subsidiaries and also companies controlling applicant carriers directly, indirectly or through another entity (each chart shall indicate the percentage ownership of every company on the chart by any other company on the chart). For each company include a statement indicating (i) any common officers or directors for every entity on the chart (with reference to the Board decision by docket number and date authorizing the holding of such positions, or an explanation of why such authorization was not required) and (ii) whether each company is a non-carrier or carrier (by railroad, motor, or water, including the number of any Board certificate or permit, and the docket number of any proceeding pending before the Board). Such information may be referenced through notes to the chart.

(7) If applicant is not a carrier, indicate (i) the type of business in which it is engaged, (ii) the length of time so engaged, and (iii) its present and prospective activities which have or may have a relation to transportation subject to 49 U.S.C. Subtitle IV.

(8) Indicate whether there are any direct or indirect intercorporate or financial relationships at the time the application is filed, not disclosed elsewhere in the application, through holding companies, ownership of securities, or otherwise, between (i) applicant carriers and any carrier or person affiliated with any carrier or (ii) a person affiliated with applicant carriers and any carrier or person affiliated with any other carrier. Indicate the nature and extent of such relationships, if they exist, and, if an applicant carrier owns securities of a carrier subject to 49 U.S.C. Subtitle IV provide the car-

rier's name, a description of securities, par value of each class of securities held, and the applicant carriers' percentage of total ownership.

(c) In a *significant* transaction, submit the information specified in paragraphs (b)(3), (b)(5), (b)(6), (b)(7), and (b)(8) of this section.

[47 FR 9844, Mar. 8, 1982. Redesignated at 47 FR 49592, Nov. 1, 1982, and amended at 50 FR 15751, Apr. 22, 1985; 56 FR 41806, Aug. 3, 1991; 57 FR 28641, June 26, 1992; 58 FR 63104, Nov. 30, 1993; 62 FR 9717, Mar. 4, 1997; 64 FR 53269, Oct. 1, 1999]

#### §1180.7 Market analyses.

*Impact analyses* (exhibit 12). In *major* and *significant* transactions applicants shall submit analyses of the impacts of the proposed transaction—both adverse and beneficial—on inter- and intramodal competition for freight surface transportation in the regions affected by the transaction and on the provision of essential services by applicants and other carriers. An impact analysis should include underlying data, a study of the implications of that data, and a description of the resulting likely effects of the transaction on transportation alternatives available to the shipping public. Each aspect of the analysis should specifically address significant impacts as they relate to the statutory criteria (49 U.S.C. 11324 (b) or (d), essential services, and competition). The Board may identify particular markets and issues that it believes warrant further study. If appropriate, the Board will also indicate the format of such analyses. Applicants must address markets and issues identified by the Board, but also any others they consider relevant. Specific regulations on impact analyses are not provided so that parties will have the greatest leeway to develop the best evidence on the impacts of each individual transaction. General guidelines follow:

(a) Applicants shall prepare analyses of the anticipated effects of the transaction on traffic patterns, market concentrations, or transportation alternatives available to the shipping public.